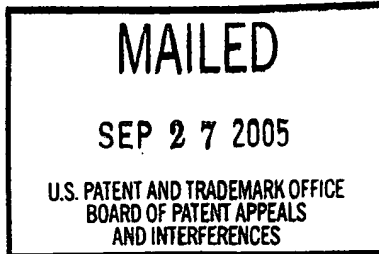


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAYMOND ZAPPE



Appeal No. 2005-2102
Application No. 10/077,346

ON BRIEF

Before KIMLIN, WALTZ, and JEFFREY T. SMITH, Administrative Patent Judges.

WALTZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the primary examiner's final rejection of claims 21 through 27, which are the only claims pending in this application (Brief, page 2).¹ We have jurisdiction pursuant to 35 U.S.C. § 134.

According to appellant, the invention is directed to a three or four layered bed liner for a truck (Brief, page 4). Appellant states that the claims stand or fall together for each separate ground of rejection (Brief, pages 5-6). Therefore we select one

¹We refer to and cite from the Brief dated July 26, 2004.

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claim from each ground of rejection and decide the grounds of rejection on the basis of these claims alone. See 37 CFR § 1.192(c)(7)(2003). Representative independent claim 21 is reproduced below:

21. A bed liner for a vehicle comprising in combination:
a first base layer;
a patterned second layer secured to the first base layer; and
a clear third layer secured to the patterned layer for
permitting the patterned layer to be viewed.

The examiner has relied upon the following references as evidence of unpatentability:

Okada et al. (Okada)	4,098,184	Jul. 04, 1978
Kamiya et al. (Kamiya)	6,103,390	Aug. 15, 2000
Sada et al. (Sada) (filed Dec. 10, 1999)	6,350,509	Feb. 26, 2002

Claims 25 and 26 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite (Answer, page 3, referring to the Office action dated Nov. 4, 2003). Claims 21-22 and 25-26 stand rejected under 35 U.S.C. 102(b) as anticipated by Kamiya (*id.* At page 4). Claims 23-24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Kamiya in view of Okada (*id.* At page 5). Claim 27 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Kamiya in view of Sada (*id.*).

Based on the totality of the record, including due consideration of appellant's arguments in the Brief and the examiner's position in the Answer, we *affirm* all of the rejections on appeal essentially for the reasons stated in the Answer, the Office action dated Nov. 4, 2003, and for those reasons set forth below.

OPINION

A. *The Rejection under § 112, ¶2*

The examiner finds that the claimed terms "relatively flexible" (claim 25) and "relatively inflexible" (claim 26) are "vague and unclear" since the degree of flexibility is not defined (Answer, pages 3-4).

Appellant argues that the specification was amended to state that the various coats "may flex easily" or they "may not flex easily," thus allowing a person of ordinary skill in the bed liner art to understand the terms in question (Brief, page 6, citing ¶ 0049 of the specification).

"The legal standard for definiteness [of claim language] is whether a claim reasonably apprises those of skill in the art of its scope. [Citations omitted]." *In re Warmerdam*, 33 F.3d 1354, 1361, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994). The statute (§ 112, ¶2) is satisfied if a person skilled in the field of the invention

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would reasonably understand the claim when read in the context of the specification. See *Union Pac. Res. Co. V. Chesapeake Energy Corp.*, 236 F.3d 684, 692 (Fed. Cir. 2001). Words of degree, such as "relatively flexible" and "relatively inflexible," are not per se indefinite but there must be some definitions or guidelines in the specification to allow one skilled in the art to determine the metes and bounds of these claimed terms. See *Seattle Box Co., Inc. V. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 826, 221 USPQ 568, 574 (Fed. Cir. 1984). Here appellant fails to point to any particular definitions or guidelines in the specification for the contested terms, with the specification using similar words of degree in "defining" these terms (see ¶ 0049 of the specification). Accordingly, we agree with the examiner that as the claims now read, surmise and conjecture must be used to determine whether a liner would have the property of flexibility within the scope of the claims. See *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (Bd. Pat. App. & Int. 1991). Therefore we affirm the examiner's rejection of claims 25 and 26 under the second paragraph of section 112.

B. The Rejection under § 102(b)

The examiner finds that Kamiya discloses an article for a vehicle comprising in combination a first base layer,² a patterned second layer 9 secured indirectly to the first base layer, and a clear third layer 10 secured to the patterned layer for permitting the patterned layer to be viewed (Answer, page 4). In view of the examiner's claim construction for the term "bed liner" (Answer, pages 4 and 6) and "secured to" (Answer, pages 6-7), the examiner finds that Kamiya describes every limitation recited in claim 21 on appeal.

Appellant argues that Kamiya discloses a multilayer medallion that has nothing to do with the subject matter of this application (Brief, page 7). Appellant also argues that Kamiya does not have the three claimed layers arranged in the same manner as specified in claim 21 (Brief, page 7), specifically arguing that Kamiya discloses nine layers with a clear coating 10 on both a color coating 9 and the resin film layer 2, while claim 21 specifies the clear coating is on the patterned layer (Brief, pages 8-9).

²The examiner denominates the first base layer of Kamiya as "5A" but apparently should have listed "4" as the base layer, since layer 5A is a lower adhesive layer (col. 4, ll. 12-13) while layer 4 is a resin sheet that is part of the base layer (col. 4, ll. 8-11). Regardless, the "base layer" is described as containing layers 8, 5A and 4, while the layers 10, 9, 2, 3, 6 and 5 form the "upper decorative layer" (col. 3, ll. 53-55; col. 4, ll. 8-11).

Implicit in our review of the examiner's anticipation analysis is that the claim must first have been correctly construed to define the scope and meaning of each contested limitation. See *Gechter v. Davidson*, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). During examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995). When a claim term is expressed in general descriptive words, it typically will not be limited to a preferred embodiment recited in the written description. See *Renishaw PLC v. Marposs Societa' Por Azioni*, 158 F.3d 1243, (Fed. Cir. 1998).

In view of these case law precedents, we give the introductory language "bed liner" its broadest reasonable interpretation as including any layer or laminate capable of lining a bed of a vehicle, and we do not limit this term to the "typical" bed liner with a structure including a bottom or floor, a front or cab wall, and two side walls (specification, page 11, ¶ 0050). We similarly give the broadest reasonable interpretation to "secured to" which is construed as meaning that a layer is "over" or above the other layer and may be directly or indirectly attached. See the specification, ¶ 0006, where the multilayer molded liner includes a

clear or transparent top layer "with a lower layer beneath the clear layer" having a pattern. See the specification, ¶ 0007, where a plurality of layers includes a top clear layer with a patterned layer "below or underneath" the clear layer. See the specification, ¶ 0016, where the bed liner has a transparent layer "over" the patterned layer. Accordingly, it is clear from appellant's specification that there is no requirement that the claimed layers directly contact each other.

In view of our claim construction above, we agree with the examiner that the layers 5A (or 4), 9 and 10 disclosed by Kamiya meet the limitations set forth in claim 21 for the three layers of the bed liner, namely a first base layer, a colored (patterned) layer, and a clear top layer so the patterned layer may be viewed. Kamiya discloses that the product is a laminate (col. 1, l. 9) and, before stamping into a decorative article, is a flat sheet capable of lining the bed of a vehicle (col. 4, ll. 30-38). As explained by the examiner (Answer, page 6), appellant's arguments are limited to three layers in direct contact with each other and thus are not commensurate with the scope of the claims as construed above. We note that the transitory term "comprising" opens the claim to the inclusion of other layers. See *Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1348 (Fed.

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Cir. 2001) ("in the parlance of patent law, the transition 'comprising' creates a presumption that the recited elements are only a part of the device, that the claim does not exclude additional, unrecited elements.").

For the foregoing reasons and those stated in the Answer and the Office action dated Nov. 4, 2003, we affirm the examiner's rejection of claim 21, and claims 22, 25 and 26 which stand or fall with claim 21, under section 102(b) over Kamiya.

C. The Rejections under § 103(a)

The examiner applies Kamiya as discussed above, further citing Okada against claims 23 and 24 for its teaching that screen printing methods are applicable to monochromatic and polychromatic printing (Answer, page 5). With regard to the rejection of claim 27, the examiner applies Kamiya as discussed above and further cites Sada for its teaching of adding another clear coat to the top of a laminate to improve the brilliancy of the structure (*id.*).

Appellant argues that neither Okada nor Sada have anything to do with the structure claimed (Brief, pages 9-11). However, we agree with the examiner that Kamiya discloses screen printing to produce the coloring layer 9 (col. 3, ll. 58-66), while Okada teaches the use of screen printing for monochromatic or polychromatic printings, thus rendering the use of either of these

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printings in the Kamiya process obvious to one of ordinary skill in the art. Similarly, we agree with the examiner that the use of additional clear coatings, as taught by Sada, would have been obvious in the structure of Kamiya to improve the brilliancy of the structure.

Based on the totality of the record, including due consideration of appellant's arguments, we determine that the preponderance of evidence weighs most heavily in favor of obviousness within the meaning of section 103(a). Accordingly, we affirm all rejections on appeal based on section 103(a).

D. Summary

We affirm the rejection of claims 25 and 26 under 35 U.S.C. § 112, second paragraph. We affirm the rejection of claims 21-22 and 25-26 under 35 U.S.C. § 102(b) over Kamiya. We affirm the rejection of claims 23-24 under 35 U.S.C. § 103(a) over Kamiya in view of Okada. We affirm the rejection of claim 27 under 35 U.S.C. § 103(a) over Kamiya in view of Sada.

The decision of the examiner is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(2004).

AFFIRMED

Edward C. Kimlin
EDWARD C. KIMLIN
Administrative Patent Judge

THOMAS A. WALTZ
Administrative Patent Judge

BOARD OF PATENT
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JEFFREY T. SMITH
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